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No. 95-148

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

SEABURY MANAGEMENT, INC.,

Petitioner,

vs.

PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC. and MIDDLE ATLANTIC SECTION OF PROFESSIONAL GOLFERS' ASSOCIATION OF AMERICA, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether a national membership organization is capable of conspiring for antitrust purposes with one of its separately incorporated geographic regional sections where the national organization exercises complete control over its section.

2. Whether the Court below properly upheld the District Court's determination that plaintiff had failed to prove that the relevant market included only two golf trade shows and excluded all others.

RULE 29.1 LISTING

The defendant-appellees below, who are respondents herein, have the following parent companies and subsidiaries (except wholly owned subsidiaries).

None.

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Respondents respectfully request that the Court deny the Petition for Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Fourth Circuit in this case.

STATEMENT OF THE CASE

The case below concerned a contract entered into between petitioner Seabury Management, Inc. ("Seabury") and respondent Middle Atlantic Section, Professional Golfers' Association of America ("MAPGA"). Petitioner alleged, among other things, that MAPGA and respondent Professional Golfers' Association of America ("PGA") conspired in violation of the antitrust laws to terminate the contract. The principal

issue raised by the petition for certiorari is whether the Court of Appeals properly held that respondents PGA and its geographical section, MAPGA, were legally incapable of conspiring for antitrust purposes under this Court's decision in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984).

The decision below turned exclusively on the court's analysis of the facts presented at trial. After a detailed review of the evidence concerning the relationship between the PGA and MAPGA, the District Court held that the PGA and MAPGA were a "single economic unit with the PGA possessing ultimate control over the actions of [MAPGA]," and dismissed the antitrust conspiracy claim. Petition, App. at 27a. The Court of Appeals, after its own review of the factual record, affirmed and held that, even though the PGA and MAPGA were not technically a parent and a wholly-owned subsidiary, "[a]fter examining the relationship between the PGA and the MAPGA, we are convinced that no reasonable trier of fact could have found them to be separate entities." Petition, App. at 6a.

Petitioner's attempt to paint the Court of Appeals' decision as an unprecedented application of *Copperweld* to independent competing business entities belonging to a trade association or to a league composed of separate, competing sports teams is simply at odds with the factual record. Indeed, on appeal to the Fourth Circuit, petitioner raised precisely the same argument raised here, and the Court of Appeals rejected it based on the factual record.

The best descriptions of the facts are found in the decisions of the courts below. Petitioner's statement of the case improperly presents as facts a number of mere allegations that the courts below found unsupported by any evidence.[1] The actual

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[1] For example, petitioner repeatedly refers to a supposed conspiracy between the PGA and a trade association of golf manufacturers and distributors, even though both courts below found that there was no evidence to

(Footnote continued)

evidence below established without contradiction that the PGA does not consist of a group of formerly competing regional golf associations who joined forces to create a new, unified organization. Nor does the PGA consist of independent competing entities operating under the umbrella of a trade association. Rather, the PGA is a single national membership association, formed early in this century, consisting of some 14,000 individual golf professionals. The PGA voluntarily chose to divide itself into 41 subsidiary geographic sections, one of which is respondent MAPGA. The PGA decided that these geographic sections should be separately incorporated for tax reasons. Upon admission to the PGA, each PGA member automatically becomes a member of the geographic section where he or she works. The PGA sets policy for the entire association, including each of the sections. The PGA also conducts common trademark licensing, tournaments, insurance, data processing and a host of other programs for its members. Each PGA section is responsible for conducting these national programs and related local programs in accordance with national PGA policies within the geographic area assigned to the section by the PGA.

Applying *Copperweld* to these facts, the Court of Appeals held that the PGA and its section, MAPGA, were legally incapable of conspiring in violation of the antitrust laws. This finding was premised on the factual conclusion of the District Court that:

> While the MAPGA is not a wholly-owned subsidiary of the PGA and these entities are separately incorporated, the evidence at trial established that as pertinent to this case the PGA and its member sections function as a single economic unit with the

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support this allegation -- an issue on which petitioner does not even seek certiorari.

> PGA possessing ultimate control over the actions of individual sections.

Petition, App. at 27a.

As set forth below, the decision of the Court of Appeals on the *Copperweld* issue, as well as the other issues raised by petitioner, turned on the court's analysis of the facts of the case and raises no novel, or even questionable, issues of law. Thus, the petition should be denied.

REASONS FOR DENYING THE WRIT

I.

THE COURT OF APPEALS CORRECTLY HELD THAT THE PGA AND THE MAPGA WERE LEGALLY INCAPABLE OF CONSPIRING FOR ANTITRUST PURPOSES

A. The *Copperweld* Decision

In *Copperweld*, this Court held that a corporation and its wholly-owned subsidiary were legally incapable of "conspiring" under the Sherman Act. The Court noted that the essence of any antitrust conspiracy was the loss of independent economic decisionmaking which occurred when "two or more entities that previously pursued their own interests separately [were] combining to act as one for their common benefit." 467 U.S. at 769. Thus, the Court ruled that a corporation could not conspire with a wholly-owned subsidiary because this "does not represent a sudden joining of two independent sources of economic power previously pursuing separate interests" and "the coordinated activity of a parent and its wholly-owned subsidiary must be viewed as that of a single enterprise for purposes of § 1 of the Sherman Act." *Id.* at 771.

In support of its decision, the Court observed that a parent and its separately incorporated subsidiary were "not unlike a multiple team of horses drawing a vehicle under the control of a single driver." *Id.* It was the parent's ability to control the subsidiary which provided the basis for concluding that two

legally separate entities were in fact one for antitrust purposes:

> But in reality a parent and a wholly owned subsidiary *always* have a "unity of purpose or a common design." They share a common purpose whether or not the parent keeps a tight rein over the subsidiary; the parent may assert full control at any moment if the subsidiary fails to act in the parent's best interests.

Id. at 771-72.

Although *Copperweld*'s holding was limited to its facts, the Court's reasoning shows that the rule announced in the case was not limited solely to a corporation and its wholly-owned subsidiary. *Id.* at 772-73. The Court stressed that economic substance governed over precise issues of corporate form and cited with approval *Sunkist Growers, Inc. v. Winckler & Smith Citrus Prods. Co.*, 370 U.S. 19 (1962), in which various agricultural cooperatives were held legally incapable of conspiring even though the cooperatives did not have a standard parent/subsidiary relationship and were owned by their members rather than by a parent corporation. As the *Copperweld* Court put it: " *** *Sunkist Growers* supports the broader principle that substance, not form, should determine whether a separately incorporated entity is capable of conspiring under § 1." 467 U.S. at 773 n. 21.

B. Cases Interpreting *Copperweld*

Since this Court's decision in *Copperweld*, a number of lower courts have applied that decision to situations other than a corporation and its wholly-owned subsidiary.[2] In

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[2] *See, e.g., Advanced Health-Care Servs., Inc. v. Radford Community Hosp.*, 910 F.2d 139, 146 (4th Cir. 1990) (two sister companies incapable of conspiring); *Bell Atl. Business Sys. Serv. v. Hitachi Data Sys. Corp.*, 849 F. Supp. 702 (N.D. Cal. 1994) (80% owned subsidiary could not conspire with either parent or sister subsidiary).

particular, numerous courts have applied *Copperweld* to related corporate entities which -- like the PGA's sections -- are subject to a "parent's" control and thereby operate as a single economic enterprise, regardless of whether they fit the classic parent/wholly-owned subsidiary model. For example, in *City of Mt. Pleasant v. Associated Elec. Corp.*, 838 F.2d 268 (8th Cir. 1988), the Court of Appeals for the Eighth Circuit applied *Copperweld* to a cooperative consisting of several thousand members, which chose to organize itself into separate corporations. Likewise, in *Proctor v. General Conference of Seventh-Day Adventists*, 651 F. Supp. 1505 (N.D. Ill. 1986), the court found that, although they consisted largely of separate associations, the "Church's General Conference, union conferences, local conferences, publishing house, and [university]" were "a single unified body governed by the General Conference." *Id.* at 1516, 1525; *see also Genetic Sys. Corp. v. Abbot Labs.*, 691 F. Supp. 407 (D.D.C. 1988) (Red Cross could not conspire with its regional bodies, notwithstanding claims that they functioned independently); *Zimmerman v. Board of Publications of Christian Reformed Church*, 598 F. Supp. 1002, 1010 (D. Colo. 1984) (Christian Reformed Church and its separately incorporated Board of Publications incapable of conspiring under *Copperweld*). The decisive factor is the "parent's" power of control. *See, e.g.*, P. Areeda, VII *Antitrust Law* ¶ 1467f, at 267 (1986) ("[*Copperweld's*] stress on the power to control as distinct from its day-to-day exercise seems equally apt when ownership is not completely common.").

In contrast to the above cases, petitioner fails to cite a single case in which any court has ever found that a parent organization with the right to control its constituent geographic sections is legally capable of entering into an antitrust conspiracy with them.

C. The Lower Court Properly Applied *Copperweld* to the Facts of this Case

The Court of Appeals for the Fourth Circuit correctly applied the principles of *Copperweld* to the facts before it and

held that the PGA and MAPGA cannot conspire for antitrust purposes. To be sure, because they are nonprofit organizations, the PGA and MAPGA do not have "owners" in the same sense as for-profit corporations. For tax purposes, the PGA directed that MAPGA and the other 40 PGA geographical sections be separately incorporated and MAPGA is not technically a "wholly-owned" subsidiary of the PGA. But, applying *Copperweld*, all the evidence introduced below agreed that the PGA and MAPGA were one business entity for antitrust purposes.

For example, the documents introduced at trial showed that the PGA and its sections operated as a unitary business enterprise, and that the PGA, as the parent, had the ability to control the sections whenever it decided to do so. The PGA's Charter (Articles of Incorporation) expressly stated that the sections were "affiliated subsidiary organizations" of the PGA which operated in defined geographical areas established by the PGA:

> For convenience of administration, the territory of the PGA is to be broken down into a number of Districts, and these Districts into Sections. The numbers and boundaries of the Districts and Sections alike may be revised from time to time. *The Sections shall be in the nature of affiliated subsidiary organizations*, their purposes and activities shall be consistent with those of the PGA and they shall be accorded limited autonomy with respect to such purposes and activities in their respective local areas.

(Emphasis added).

The record below further established that the PGA exercised complete control over the sections.

• The PGA Constitution established that the sections were governed both by the PGA's Constitution and by policies adopted either at PGA annual meetings or by the PGA's board of directors. The Constitution not only gave the PGA board of

directors the authority to establish all policies applicable to the PGA and its sections, but also authorized the PGA board to review upon appeal the action of any section.

• The PGA Constitution provided that the PGA Board of Directors set each section's geographic boundaries.

• The PGA Constitution and policies adopted by the PGA Board of Directors established rules that governed membership in both the PGA and its constituent sections and specified that all PGA members working in the section's territory automatically became members of the section. (Anyone stripped of membership in the PGA was automatically stripped of membership in the section).

The PGA Constitution set limits on the sections' governing documents. According to the PGA Constitution:

> The several Sections shall adopt a Constitution and By-Laws which shall not be inconsistent with or at variance with the Constitution of the Association nor with any of its rules, regulations or policies.

The MAPGA governing documents introduced at trial were -- as required by the PGA Constitution -- entirely consistent with that document. MAPGA's Articles of Incorporation expressly recognized that MAPGA's purpose was to "effect any *** object which may be determined to be advantageous to the Corporation and The Professional Golfers' Association of America *** ." The section's Constitution and By-Laws specifically described the limited "territory under the jurisdiction of the Section," acknowledged that the PGA assigned the section to a geographic area, and explained that the section was incorporated "[b]y authority of The Professional Golfers' Association of America."

As set forth in the decisions of both the District Court and the Court of Appeals, the record below described numerous instances in which the PGA actively supervised and controlled the activities of its sections. Indeed, even petitioner Seabury's contract with MAPGA specifically acknowledged the supervisory role of the PGA by expressly referring to the

PGA as MAPGA's "sanctioning body" and providing that a breach of the agreement by Seabury would constitute irreparable harm *to the PGA*.

In these factual circumstances, the Court of Appeals for the Fourth Circuit correctly held that, based on the factual record, "no reasonable trier of fact could have found [the PGA and MAPGA] to be separate entities." Petition, App. at 6a. Thus, the Court's holding in *Copperweld* that the relevant entities did not "represent a sudden joining of two independent sources of economic power" but instead "the coordinated activity of a *** single enterprise," 467 U.S. at 771, applied squarely to this case.

Petitioner's argument to this Court that the PGA and MAPGA were somehow independent competitors joined in a trade association -- or that the decision below conflicts with this Court's decision in *NCAA v. Board of Regents, Oklahoma Univ.*, 468 U.S. 85 (1984) -- simply ignores the factual record. Unlike this case, *NCAA* involved an organization of separate, competing universities who joined together to form the NCAA and to establish rules governing their independent competitive activities. Neither *NCAA*, nor any other case cited by petitioner, has anything to do with the facts of this case, which involve a single national membership organization with a central controlling national body which has chosen for decades to organize itself into geographic sections for administrative purposes.[3]

In sum, the Fourth Circuit examined the factual record, correctly applied *Copperweld*, and properly held that the PGA

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[3] Thus, this case does not concern whether other actions by the PGA that are not at issue here might be considered an agreement among its *individual members*. Petitioner has never even alleged -- much less proved -- such a conspiracy, charging only that the national PGA conspired with its Middle Atlantic section. While the two pre-*Copperweld* decisions and one law review article relied upon by petitioner might have some applicability to that entirely different case, they have nothing to do with the allegations litigated below.

and MAPGA were incapable of conspiring for antitrust purposes.

II.

THE COURT BELOW CORRECTLY HELD THAT PETITIONER HAD FAILED TO PROVE THE PGA POSSESSED MONOPOLY POWER IN A RELEVANT PRODUCT MARKET

Petitioner also alleged below that the PGA violated section 2 of the Sherman Act by monopolizing a market which consisted of two golf trade shows -- a show owned by the PGA and petitioner's trade show. After analyzing the record evidence, both the District Court and the Fourth Circuit rejected this gerrymandered two-show market. After concluding that the evidence below showed that a number of additional golf trade shows would have to be included in any rational market definition, the Court of Appeals held that:

> *** [petitioner's] expert excluded from the relevant market the West Coast Show and all smaller golf trade shows; this exclusion was not supported by any evidence of such estimates of market share, attendance figures, or demographic studies. Thus, because the testimony of [petitioner's] expert "is not supported by sufficient facts to validate it in the eyes of the law," we conclude that [petitioner] has failed to prove the existence of a relevant market.

Petition, App. at 8a-9a (citation omitted).

It is well-established that a monopolization claim fails as a matter of law unless the plaintiff can show that the defendant has monopoly power in the relevant market. *Eastman Kodak Co.* v. *Image Technical Servs., Inc.*, 504 U.S. 451, 481 (1992). Petitioner raises no issue as to why it is exempt from this rule, why the Court of Appeals' analysis of the facts below was incorrect, or how it misapplied any decision by this Court. The argument that the Court of Appeals' ruling on market definition is somehow inconsistent with its

Copperweld ruling is mere sophistry and again ignores the factual record. Therefore, the petition should be denied to the extent it seeks review of the decision below dismissing petitioner's section 2 claim.[4]

[4] The penultimate paragraph of the petition asks this Court to review the dismissal of petitioner's state law tortious interference claim. Virtually no reasons are offered as to why this should be done. The District Court's opinion set forth in detail the various reasons supporting dismissal of this state law claim, and there is no sound reason for review by this Court. *See* Petition, App. at 43a-49a.

CONCLUSION

For the foregoing reasons, respondents respectfully submit that the Petition should be denied.

Respectfully submitted,

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